

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSEPH JACKSON, #05B1287,

Plaintiff,

v.

DECISION AND ORDER  
15-CV-922-A

JOHN COLVIN, et al.,

Defendants.

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This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(B). On October 4, 2017, Magistrate Judge Schroeder filed a Report and Recommendation (Dkt. No. 36), recommending that Defendants Gokey and Petrie's motion for judgment on the pleadings (Dkt. No. 33) on Plaintiff's excessive force claim be denied.

On October 18, 2017, Defendants Brian Gokey and Timothy Petrie filed objections to the Report and Recommendation (Dkt. No. 39). Plaintiff filed a response on October 27, 2017 (Dkt. No. 41), and Defendants filed a reply on November 30, 2017 Dkt. No. 44. The matter was deemed submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which objections have been made. Upon *de novo* review, and after reviewing the submissions from the parties, the Court adopts Magistrate Judge Schroeder's conclusions. The standard of review for a motion for judgment on the pleadings requires the Court to view the allegations in the complaint in the light most favorable to

the Plaintiff. Doing so here, the Court agrees with Judge Schroeder's recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, Defendants Gokey's and Petrie's motion for judgment on the pleadings on Plaintiff's excessive force claim is denied, and this matter is recommitted to Magistrate Judge Schroeder for further proceedings

IT IS SO ORDERED.

*Richard J. Arcara*

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HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: March 21, 2018